

ORDINANCE NO. 2571

AN ORDINANCE AUTHORIZING THE CITY OF GARDNER, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS (TAXABLE UNDER FEDERAL LAW), SERIES 2018 (USIR II – GARDNER, LLC), IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$38,000,000 TO PAY A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING AND IMPROVING A COMMERCIAL FACILITY WITHIN THE CITY; AND AUTHORIZING EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS (MIDWEST COMMERCE CENTER).

WHEREAS, the City of Gardner, Kansas (the “Issuer”), is authorized by K.S.A. 12-1740 *et seq.*, as amended (the “Act”), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities;

WHEREAS, pursuant to Resolution No. 1974 of the Issuer, adopted on October 16, 2017 (the “Resolution of Intent”), the Issuer expressed its intent to issue industrial revenue bonds in the principal amount of approximately \$38,000,000 for the purpose of financing a portion of the cost of acquiring, constructing and improving a commercial warehouse, manufacturing facility, call center, and related improvements at the Midwest Commerce Center (the “Project”), located at 17001 Mercury Street, northeast of the intersection of Mercury Street and Industrial Bypass, within the Issuer, for the benefit of USIR II – Gardner, LLC (the “Company”), a Delaware limited liability company and its successor or assigns, and further authorized the execution of that certain Payment in Lieu of Tax Agreement dated as of February 1, 2018, by and between the Issuer and the Company (the “PILOT Agreement”) providing for a property tax abatement for the Project subject to certain conditions;

WHEREAS, the Issuer has found and does find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Industrial Revenue Bonds (Taxable Under Federal Law), Series 2018 (USIR II – Gardner, LLC), in the aggregate principal amount of approximately \$38,000,000 (the “Bonds”), for the purpose of paying a portion of the cost of acquiring, constructing and improving the Project; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds to execute and deliver (i) a Trust Indenture (the “Indenture”), with Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the “Trustee”), prescribing the terms and conditions of issuing and securing the Bonds; (ii) a Base Lease Agreement (the “Base Lease”), pursuant to which the Issuer will lease the Project from the Company; (iii) a Lease (the “Lease” and together with the Base Lease, the “Leases”), pursuant to which the Issuer shall lease back the Project to the Company, in consideration of rentals which are intended to be sufficient to provide for the payment of the principal of, premium, if any, and interest on the Bonds as the same become due; and (iv) a Bond

Purchase Agreement providing for the sale of the Bonds by the Issuer to the Company (collectively, the “Bond Documents”);

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS, AS FOLLOWS:

Section 1. Authority to Cause the Project to be Purchased and Constructed. The Issuer is hereby authorized to cause the Project to be acquired, constructed and improved all in the manner and as more particularly described in the Indenture and the Leases hereinafter authorized.

Section 2. Authorization of and Security for the Bonds. The Issuer is hereby authorized and directed to issue the Bonds, to be designated “City of Gardner, Kansas, Industrial Revenue Bonds (Taxable Under Federal Law), Series 2018 (USIR II – Gardner, LLC)” in the aggregate principal amount of not to exceed \$38,000,000 (the “Bonds”) for the purpose of providing funds to pay the costs of acquiring, constructing and improving the Project. The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The Bonds shall be special limited obligations of the Issuer payable solely from the trust estate established under the Indenture, including revenues from the lease of the Project. The Bonds shall not be general obligations of the Issuer, nor constitute a pledge of the full faith and credit of the Issuer and shall not be payable in any manner by taxation.

Section 3. Execution of Bonds and Bond Documents. The Mayor or acting Mayor of the Issuer is hereby authorized and directed to execute the Bonds and deliver them to the Trustee for authentication on behalf of, and as the act and deed of the Issuer, in the manner provided in the Indenture. The Mayor or acting Mayor is further authorized and directed to execute and deliver the Bond Documents on behalf of, and as the act and deed of the Issuer, in substantially the forms on file in the office of the City Clerk, with such corrections or amendments thereto as the Mayor or acting Mayor may approve, which approval shall be evidenced by his execution thereof, and to execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer’s official seal.

Section 4. Pledge of the Project and Net Earnings. The Issuer hereby pledges its interest in the Project and the net earnings generated under the Lease to the payment of the Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Bonds shall be deemed to have been paid within the meaning of the Indenture.

Section 5. Further Authority. The officials, officers, agents and employees of the Issuer are hereby authorized and directed to take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect

to the Bonds and the Bond Documents as necessary to give effect to the transactions contemplated in this Ordinance and in the Bond Documents.

Section 6. Effective Date. This Ordinance shall take effect from and after its final passage by the Governing Body of the Issuer, signature by the Mayor and publication once in the official newspaper of the Issuer.

PASSED by the City Council of the City on March 19, 2018.


Signed by the Mayor on March 19, 2018.

CITY OF GARDNER, KANSAS

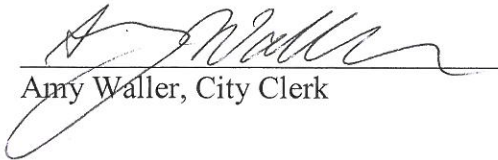
(Seal)

Attest:



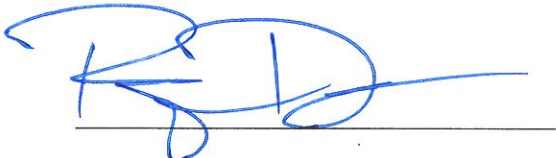


Steve Shute, Mayor



Amy Waller, City Clerk

Approved as to form:



Ryan B. Denk, City Attorney